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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/282,614	03/31/1999	STEVEN MICHAEL FRENCH	AT9-98-713	8850

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EXAMINER

NGUYEN, DUSTIN

ART UNIT	PAPER NUMBER
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2154

DATE MAILED: 04/18/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/282,614

Applicant(s)

FRENCH ET AL.

Examiner

Dustin Nguyen

Art Unit

2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-12 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-12 and 23 is/are rejected.
- 7) ☒ Claim(s) 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

1. Claims 9-12 and 23 are presented for consideration.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 9-12 and 13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7-17 of US Patent No 6442685 [hereinafter '685 patent]. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons:

As per claims 9, 10 and 23, claims 7 and 8 of the '685 patent contains the subject matter claimed in the instant application. The patent and the application are claiming common subject matter, as follows:

- dynamically modifying a first set of server names for a first server ...
- dynamically modifying a second set of server names for a second server ...
- determining that the first server ...
- dynamically modifying the first set of server names ...

The claims 7 and 8 of '685 patent does not contain the method steps in the same order. However, it would have been an obvious modification for one of ordinary skill in the art at the time the invention was made to perform the steps in the same order as claimed because doing so would have enabled the method to reconfigure server to take non-function server off-line as set forth in '685 patent.

As per claims 11 and 12, claims 9 and 10 of the '685 patent contains the subject matter claimed in the instant application. The patent and the application are claiming common subject matter, as follows:

- dynamically modifying a first set of server names for a first server ...
- dynamically modifying a second set of server names for a second server ...
- determining that the first server ...
- dynamically modifying the first set of server names ...
- dynamically modifying a second set of server names ...

The claims 9 and 10 of '685 patent does not contain the method steps in the same order. However, it would have been an obvious modification for one of ordinary skill in the art at the time the invention was made to perform the steps in the same order as claimed because doing so would have enabled the method to reconfigure server to take server on-line for service as set forth in '685 patent.

Claim Objections

4. Claim 23 is objected to because of the following informalities: Claim 23 repeats the same method steps as claimed in claim 9. Appropriate correction is required.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 9-12 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kandasamy [US Patent No 6219799], in view of Chrabaszcz [US Patent No 6134673].

7. As per claim 9, Kandasamy discloses the invention substantially as claimed including a method for reconfiguring servers in a distributed data processing system, the method comprising the computer-implemented steps of:

dynamically modifying a first set of server names for a first server by adding a first server name to the first set of server names [Abstract; col 2, lines 27-32 and 59-67];

dynamically modifying a second set of server names for a second server by adding a second server name to the second set of server names [Abstract; col 2, lines 27-32 and 59-67];

determining that the first server requires reconfiguration [Abstract; and col 3, lines 15-16];

dynamically modifying the first set of server names by adding the second server name to the first set of server names [col 3, lines 5-8 and 15-23; claim 1].

Kandasamy does not disclose

the first server responds to requests directed to the first set of server names; and

the second server responds to requests directed to the second set of server names.

Art Unit: 2154

Chrabaszcz discloses

the first server responds to requests directed to the first set of server names [col 6, lines 16-18 and 39-56]; and

the second server responds to requests directed to the second set of server names [col 6, lines 16-18 and 39-56].

It would have been obvious to a person skill in the art at the time the invention was made to combine the teaching of Kandasamy and Chrabaszcz because Chrabaszcz's teaching would provide multiple services from different servers for clients which increases scalability.

8. As per claim 10, Kandasamy discloses the first server is reconfigured in response to a determination that the second server requires fail-over support by the first server [Abstract; claim 1].

9. As per claim 11, it is rejected for similar reasons as stated in claim 9. Furthermore, Kandasamy discloses the steps of dynamically modifying the first set of server names by removing the second server name from the first set of server names [Abstract; col 3, lines 23-30].

10. As per claim 12, Kandasamy discloses the second server name is removed prior to connecting the second server to a network in the distributed data processing system [col 3, lines 28-30].

11. As per claim 23, it is rejected for similar reasons as stated above in claim 1.
12. Applicant's arguments with respect to claims 9-12 and 23 have been considered but are moot in view of the new ground(s) of rejection.
13. **A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the mail date of this letter. Failure to respond within the period for response will result in ABANDONMENT of the application (see 35 U.S.C 133, M.P.E.P 710.02, 710.02(b)).**

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dustin Nguyen whose telephone number is (703) 305-5321. The examiner can normally be reached on Monday – Friday (8:00 – 5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (703) 308-7678.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directly to the receptionist whose telephone number is (703) 305-3900.

Dustin Nguyen


ZARNI MAUNG
PRIMARY EXAMINER